

## INITIATIVE 234

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 234 to the Legislature is a true and correct copy as it was received by this office.

1       AN ACT Relating to the Washington consumer privacy act; amending  
2       RCW 19.16.250, 9.35.010, and 9.35.020; adding a new section to chapter  
3       48.01 RCW; adding new sections to chapter 9.35 RCW; adding a new  
4       chapter to Title 19 RCW; adding a new chapter to Title 7 RCW; creating  
5       new sections; prescribing penalties; and providing an effective date.

6       BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

7       NEW SECTION.   **Sec. 1.**   INTENT.   (1) The legislature finds that  
8       every entity has an affirmative and continuing obligation to respect  
9       the privacy of its consumers and to protect the security and  
10      confidentiality of consumers. The legislature finds that Washington's  
11      citizens have a right to privacy and a reasonable expectation that the  
12      personal information that they provide in commercial transactions with  
13      financial institutions and others who maintain and transfer information  
14      will be kept private and confidential. The legislature finds that  
15      there is no existing uniform law that creates an appropriate standard  
16      of conduct for disclosure of consumers' personal information and that  
17      Washington's citizens need additional statutory protection from fraud,  
18      deception, nuisance, invasion of privacy, and breach of confidentiality  
19      related to the disclosure of personal information. The legislature

1 intends to ensure that entities and consumers work cooperatively to  
2 protect consumer information and enforce sanctions when violations  
3 occur.

4 (2) The legislature finds that the disclosure of personal and  
5 sensitive information has caused specific significant harms to  
6 Washington consumers, including the appearance of unauthorized charges  
7 or debits on consumers' accounts, misappropriation of sensitive  
8 information for the purpose of assuming a consumer's identity, the  
9 unwanted and unintended dissemination of personal and sensitive  
10 information, and the invasion of privacy.

11 (3) The legislature finds that the flow of less sensitive personal  
12 information has resulted in a number of increased market efficiencies  
13 that are beneficial to consumers. These include more rapid credit  
14 transactions and check verifications, as well as an increased number of  
15 choices for products and services. The legislature finds that these  
16 benefits can be maintained by giving consumers the opportunity to  
17 choose whether their less sensitive information will be shared. The  
18 legislature finds that giving consumers this choice best balances the  
19 benefits and harms of disclosure of such information.

20 (4) The legislature finds that the incidence of identity theft is  
21 rapidly growing, and that victims of identity theft need further  
22 assistance in obtaining the information necessary to the prosecution of  
23 their cases. The legislature finds that requiring additional  
24 information sharing by merchants with victims will result in greater  
25 protections for consumers and deter potential perpetrators.

26 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly  
27 requires otherwise, the definitions in this section apply throughout  
28 this chapter.

29 (1) "Affiliate" means an entity that controls, is controlled by, or  
30 is under common control or common ownership with another entity.  
31 Companies that form alliances as a financial services group for  
32 purposes of marketing their services and are located at a common  
33 address, have personnel and payroll functions administered through a  
34 central office, jointly sponsor one combined employee savings and  
35 profit sharing plan, and have centralized data processing, mail  
36 service, communications, and procurement are considered under common  
37 control and affiliated with each other.

1       (2) "Consumer" or "customer" means a natural person or his or her  
2 legal representative, who is a resident of the state of Washington, who  
3 has been disclosed to be a resident of the state of Washington, and who  
4 purchases, leases, or otherwise contracts for products, goods, or  
5 services within the state of Washington or from an entity at its  
6 location in the state of Washington, that are primarily used for  
7 personal, family, or household purposes on or after the effective date  
8 of this section and who continues to be a resident of the state of  
9 Washington.

10       (3) "Control" means (a) ownership, control, or power to vote  
11 twenty-five percent or more of the outstanding shares of any class of  
12 voting security of the company, directly or indirectly, or acting  
13 through one or more other persons, if the company is shareholder-owned;  
14 (b) control in any manner over the election of a majority of the  
15 directors, trustees, or general partners (or individuals exercising  
16 similar functions) of the company; and (c) the power to exercise,  
17 directly or indirectly, a controlling influence over the management or  
18 policies of the company.

19       (4) "Consumer-requested purpose" means for the purpose of  
20 establishing or maintaining a business relationship, completing a  
21 transaction, or providing a product, good, or service requested by the  
22 consumer if the personal or sensitive information that is sold, shared,  
23 or transferred is subject to section 9(1) of this act.

24       (5) "De minimus cost method" means any method, such as a toll-free  
25 telephone number, a post office box or address for accepting first-  
26 class mail, or any similar, convenient, low-cost method, which does not  
27 exceed the cost of a first-class postage stamp for the consumer. If  
28 other de minimus cost methods are offered, accepting e-mail or online  
29 messages from consumers shall be considered a de minimus cost method.

30       (6) "Financial institution" means (a) a financial institution as  
31 defined in section 527(4) of the Gramm-Leach-Bliley Act, P.L. 106-102;  
32 or (b) a bank holding company or financial holding company, as defined  
33 in sections 2(a) and 2(p) of the Bank Holding Company Act, as amended,  
34 or any subsidiary thereof as defined in section 2(d) of the Bank  
35 Holding Company Act, as amended.

36       (7) "Functional business purpose" means use or disclosure of  
37 sensitive or personal information between an information custodian and  
38 another entity or person to perform services or functions on behalf of  
39 the information custodian as part of the information custodian's

1 provision of its products, goods, or services to its customers, or to  
2 assist in the maintenance or analysis of its relationships with  
3 customers, if the personal or sensitive information that is sold,  
4 shared, or transferred is subject to section 9 of this act;

5 (8) "Information custodian" means all nonpublic commercial entities  
6 that maintain data containing personal information or sensitive  
7 information about consumers they actually know reside in Washington and  
8 that sell, share, or otherwise transfer the information to others,  
9 including affiliates or nonaffiliates, for purposes other than  
10 consumer-requested purposes, functional business purposes, or under the  
11 circumstances described in section 5(3) or 7(3) of this act. An  
12 "information custodian" does not include a consumer reporting agency,  
13 as defined in the federal Fair Credit Reporting Act (15 U.S.C. Sec.  
14 1681 et seq.), to the extent its activities are directly related to  
15 assembling or evaluating consumer credit information or other  
16 information on consumers for the purpose of furnishing consumer reports  
17 to third parties, and to the extent that the activities are regulated  
18 by the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).  
19 "Information custodian" does not include an agent or other entity (a)  
20 who obtains personal or sensitive information from a consumer or an  
21 information custodian; and (b) who has contracted, in writing, with the  
22 information custodian to provide products, goods, or services on behalf  
23 of the information custodian, that are part of or integral to the  
24 provision of the information custodian's own products, goods, or  
25 services to the consumer; and (c) who does not make an independent use,  
26 including marketing use, of the personal or sensitive information,  
27 apart from providing the products, goods, or services described in  
28 subsection (8)(b) of this section; and (d) who is subject to section 9  
29 of this act. "Information custodian" does not include an entity that  
30 sells, shares, or transfers personal or sensitive information  
31 exclusively for consumer-requested purposes, functional business  
32 purposes, or under the circumstances described in section 5(3) or 7(3)  
33 of this act.

34 (9) "Marketer" means a nonpublic, commercial entity that maintains  
35 data containing personal information or sensitive information about  
36 consumers it knows reside in Washington and uses the information to  
37 engage in marketing.

38 (10) "Marketing" or "marketing information" means a promotion,  
39 solicitation, or advertisement that specifically references the sale or

1 lease of products, goods, or services made through written, telephonic,  
2 electronic, or other means, that is directed to a specific named  
3 consumer, but shall not include any promotion, solicitation, or  
4 advertisement (a) included with a billing or statement, (b) directed to  
5 the public, or (c) made to such consumer while present at the  
6 marketer's place of business or during any other contact with the  
7 marketer initiated by or at the request of the consumer.

8 (11) "Personal information" means information that is provided by  
9 the consumer in a commercial context, and is correlated to a specific  
10 individual consumer, that concerns the amount or condition of the  
11 consumer's assets, liabilities, financial transactions, purchasing  
12 history, buying preferences, business relationships, customer status,  
13 demographic information, name, address, telephone number, electronic  
14 mail address, or that reflects current or historical deposit or credit  
15 card account balances or purchase amounts.

16 (12) "Sensitive information" means information maintained in a  
17 commercial context that is correlated to a specific individual consumer  
18 or a specific account and customarily held or used for the purpose of  
19 the consumer's transaction initiation, account access or identity  
20 verification, and includes account numbers, access codes or passwords,  
21 social security numbers, consumer tax identification numbers, driver's  
22 license or permit numbers, a person's deoxyribonucleic acid, state  
23 identicard numbers issued by the department of licensing, and credit  
24 card numbers or expiration dates, and electronically captured  
25 signatures.

26 NEW SECTION. **Sec. 3.** RESTRICTION ON CONSUMER INFORMATION.  
27 Information custodians and marketers shall, in performing a transaction  
28 with a consumer, providing a service for a consumer, or establishing a  
29 business relationship with a consumer, require only that the consumer  
30 provide information reasonably necessary to perform the transaction,  
31 establish the relationship, administer or maintain the business  
32 relationship, collect or service a debt, protect against fraud or  
33 unauthorized transactions, or comply with applicable law. Any optional  
34 information must be specified as such, and the consumer must be given  
35 the option not to provide it.

36 NEW SECTION. **Sec. 4.** CONSUMER PRIVACY POLICIES. (1) An  
37 information custodian must have a consumer privacy policy that

1 discloses to existing and prospective consumers the policies and  
2 practices of the information custodian regarding the use of consumer  
3 personal information and sensitive information acquired or possessed by  
4 the information custodian. Entities that maintain data containing  
5 personal information or sensitive information but do not sell, share,  
6 or otherwise transfer the data, are not required to have a privacy  
7 policy.

8 (2) The consumer privacy policy, at a minimum, must summarize the  
9 information custodian's responsibilities under this chapter and  
10 describe the consumer's rights and remedies under it, and generally  
11 describe with whom the consumer's personal and sensitive information  
12 will be shared or to whom it will be sold or transferred. This general  
13 description must disclose either the names of those with which the  
14 information is shared, sold, or transferred or a reasonable description  
15 of the nature of each entity's business, with which information is  
16 shared, sold, or transferred.

17 (3) The consumer privacy policy must also provide a reasonable  
18 means for consumers to review their personal information that the  
19 information custodian shares, sells, or transfers for marketing  
20 purposes and that is retrievable in the ordinary course of business.  
21 The policy must also provide a reasonable process for consumers to  
22 dispute the accuracy or completeness of the information.

23 (4) An information custodian must provide a disclosure of its  
24 consumer privacy policy to customers about whom it has names and  
25 addresses or other means of contact:

26 (a) Within a reasonable period of time after the information  
27 custodian obtains the names and addresses or other means of contact;

28 (b) Not less than annually after that to a customer whose personal  
29 or sensitive information the information custodian, within the twelve-  
30 month period before the date of the provision of the policy, has sold,  
31 shared, or transferred other than under the circumstances described in  
32 section 5(3) or 7(3) of this act, for a customer requested purpose, or  
33 for a functional business purpose; and

34 (c) Not less than thirty days after a prospective customer's  
35 initial request for the policy.

36 (5) An information custodian that is not a financial institution  
37 must disclose its consumer privacy policy, and any material changes  
38 that are made to the policy or the information custodian's business  
39 structure, clearly and conspicuously in writing, through means

1 reasonably calculated to inform new customers of the policy's  
2 provisions or material changes that are made to the policy or the  
3 information custodian's business structure.

4 (6) If the information custodian sells or offers products, goods,  
5 or services online, the privacy policy must be disclosed on the  
6 effective date of this section, on a continuing basis, clearly and  
7 conspicuously, on a web page that is directly and prominently linked to  
8 the information custodian's website.

9 (7) The consumer privacy policy must be readily available for  
10 review at the information custodian's place of business.

11 (8) An information custodian that is a financial institution is  
12 deemed to have complied with the requirements of this section and  
13 section 5(1)(a) of this act if it provides the disclosures required by  
14 subsections (1), (2), and (3) of this section and section 5(1)(a) of  
15 this act together with the disclosures provided in compliance with  
16 section 503 of Public Law 106-102 (the Gramm-Leach-Bliley Act).

17 (9) If an information custodian's business relationship is with  
18 multiple parties who are named in a common account or insurance policy,  
19 the information custodian satisfies the requirements of this section by  
20 making the required disclosures to the first-named account holder or  
21 legal representative on the signature card, contract, or other evidence  
22 of the account, or the first-named insured on the insurance policy,  
23 binder, or other evidence of insurance.

24 NEW SECTION. Sec. 5. PERSONAL INFORMATION--CONSUMER CONTROL. (1)  
25 An information custodian may share, sell, or otherwise transfer  
26 personal information for purposes other than consumer-requested  
27 purposes, functional business purposes, or under the circumstances  
28 described in section 5(3) or 7(3) of this act, only if it has clearly  
29 and conspicuously disclosed to the consumer the following information  
30 in plain language:

31 (a) That the consumer has the right to choose not to have his or  
32 her personal information shared, sold, or otherwise transferred for  
33 purposes other than consumer-requested purposes, functional business  
34 purposes, or under the circumstances described in section 5(3) or 7(3)  
35 of this act. The disclosure must be made at the time the consumer  
36 privacy policy is provided to the customer under section 4 of this act.

37 (b) That the consumer may choose not to have his or her personal  
38 information shared, sold, or transferred for other than consumer-

1 requested purposes, functional business purposes, or under the  
2 circumstances described in section 5(3) or 7(3) of this act, by  
3 exercising his or her choice through a de minimus cost method the  
4 information custodian has established.

5 (2) If, under this section, a consumer chooses not to have his or  
6 her personal information shared, sold, or otherwise transferred under  
7 subsection (1) of this section, the information custodian must stop  
8 sharing, selling, or otherwise transferring the consumer's personal  
9 information to a nonaffiliate as directed by the consumer within ninety  
10 days of receiving the consumer's notice. Once a consumer has exercised  
11 his or her right under this section, an information custodian may not  
12 share, sell, or otherwise transfer the information for purposes other  
13 than consumer-requested purposes, functional business purposes, or  
14 under the circumstances described in section 5(3) or 7(3) of this act,  
15 until the consumer notifies the entity that he or she has chosen to  
16 have his or her personal information shared, sold, or otherwise  
17 transferred under subsection (1) of this section.

18 (3) This section does not apply to disclosure of personal  
19 information under the following circumstances:

20 (a) Disclosure to or at the direction or with the consent of the  
21 consumer upon his or her request. Proper identification may be  
22 required;

23 (b) Disclosure required by federal, state, or local law or  
24 regulation, rules, and other applicable legal requirements;

25 (c) Disclosure made in the course of a properly authorized civil,  
26 criminal, or regulatory examination or investigation or under a search  
27 warrant, court order, or subpoena, including an administrative subpoena  
28 or other legal process;

29 (d) Disclosure to a third party or an affiliate for the purpose of  
30 collecting a debt or dishonored item. However, the recipient of the  
31 information is subject to section 9 of this act;

32 (e) Disclosure to protect the confidentiality or security of the  
33 information custodian's records;

34 (f) Disclosure to protect against, investigate, or prevent actual  
35 or potential fraud, unauthorized transactions, claims, or other  
36 liability or to verify information provided by a consumer in connection  
37 with a claim or application for services or benefits;

38 (g) Disclosure as part of a risk control program required by or  
39 subject to examination by regulators;



1 (h) Disclosure by or to a consumer reporting agency as specifically  
2 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.  
3 1681 et seq.). However, the information custodian shall inform the  
4 recipient that the information is subject to section 9 of this act;

5 (i) Disclosure for purposes of a proposed or actual securitization,  
6 secondary market sale (including sales of service rights), or similar  
7 transaction;

8 (j) Disclosure to persons holding a legal or beneficial interest  
9 relating to the consumer;

10 (k) Disclosure of consumer information between affiliates of a  
11 depository institution as specifically permitted under the federal Fair  
12 Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.);

13 (l) Disclosure in order to provide information to insurance rate,  
14 claim, or underwriting advisory organizations, guaranty funds or  
15 agencies, applicable rating agencies of the information custodian,  
16 persons assessing the information custodian's compliance with industry  
17 standards, and the information custodian's attorneys, accountants, and  
18 auditors;

19 (m) Disclosure in connection with a proposed or actual sale,  
20 merger, transfer, or exchange of all or a portion of a business or  
21 operating unit or an insurance agent's book of business or interest in  
22 real property if the disclosure of information concerns solely  
23 consumers of the business or unit or consumers with a right to occupy  
24 the real property;

25 (n) Disclosure to a federal, state, or local agency as required by  
26 that agency to fulfill its legal obligations on behalf of a consumer;

27 (o) Disclosure of health care information in compliance with state  
28 and federal law;

29 (p) Disclosure between licensees or franchisees and their licensors  
30 or franchisors, when (i) such licensees or franchisees market, sell, or  
31 lease products, goods, or services in a retail setting at a common  
32 physical address with the licensor or franchisor; (ii) have common data  
33 processing functions with the licensor or franchisor; and (iii)  
34 advertise, market, or sell products, goods, or services marked or  
35 otherwise directly identified with the franchisor's or licensor's name  
36 or distinctive brand. However, the recipient of the information is  
37 subject to section 9 of this act;

(q) Disclosure to maintain or service a consumer's private label or affinity credit card account. However, the recipient of the information is subject to section 9 of this act;

(r) Disclosure by an entity or person to the public related to the gathering, publishing, disseminating, or circulating of news or matters of public interest or concern;

(s) Disclosure to or by a multiple listing service, real estate licensee, or real estate appraiser as defined in chapters 18.85 and 18.140 RCW for the purposes of comparative market analyses, price opinions, or appraisals.

**NEW SECTION.**     **Sec. 6.**     **MARKETING-CONSUMER CONTROL.**     (1)(a) A marketer may use personal or sensitive information for marketing purposes only if it has clearly and conspicuously disclosed in plain language to the consumer that the consumer has the right to choose not to receive marketing information from the marketer with which it has shared information and may choose not to receive marketing information by exercising his or her choice through a de minimus cost method provided by the marketer. These disclosures must be made in at least one of the following manners:

(i) In all marketing information, in whatever medium the marketing information is sent;

(ii) In the privacy policy provided to the consumer under section 4 of this act, if the marketer is an information custodian;

(iii) In a separate disclosure document or page, provided to the consumer with the first marketing information sent to the consumer, and thereafter annually. If the disclosure is made on a web page, it must be made clearly and conspicuously on the same page as the marketing information or on a separate page that is directly and prominently linked to the marketing information;

(iv) In each of its places of retail business, if the marketer is a retailer whose primary sale or lease of products, goods, or services is from its places of retail business, and the disclosure must be posted clearly and conspicuously, in plain language.

(b) The marketer must maintain adequate and reasonable access to the de minimus cost method it has established for consumers who choose not to receive marketing information.

(2) If, under this section, a consumer chooses not to receive marketing information, the marketer with which it shares personal or

1 sensitive information must stop marketing to the consumer within ninety  
2 days of receiving the consumer's notice. Once a consumer has chosen  
3 not to receive marketing information, a marketer with which it shares  
4 personal or sensitive information may not market to the consumer until  
5 the consumer notifies the marketer that he or she has chosen to receive  
6 marketing information.

7 (3) A small business, as defined in RCW 19.85.020, that is not an  
8 information custodian, that markets solely to its existing customers or  
9 that markets to consumers whose personal information was obtained from  
10 an information custodian, is not subject to subsection (1) of this  
11 section.

12 (4) A marketer may disclose personal information to another entity  
13 to perform services or functions on behalf of the marketer, as part of  
14 the marketer's marketing of its own products, goods, or services.  
15 However, the personal information that is disclosed is subject to  
16 section 9 of this act.

17 NEW SECTION. **Sec. 7. SENSITIVE INFORMATION--CONSUMER CONTROL.**

18 (1) An information custodian may not disclose sensitive information for  
19 purposes other than consumer-requested purposes, functional business  
20 purposes, or under the circumstances described in section 5(3) or 7(3)  
21 of this act unless the consumer has received written notification of  
22 the following:

23 (a) The information to be disclosed;

24 (b) The entity or entities authorized to receive the disclosure of  
25 information; and

26 (c) A specific description of the purpose for which the disclosure  
27 of information will be made.

28 (2) An information custodian may not disclose sensitive information  
29 for purposes other than consumer-requested purposes, functional  
30 business purposes, or under circumstances described in section 5(3) or  
31 7(3) of this act unless the consumer, upon notice as provided in this  
32 section and affirmative consent, authorizes the disclosure of the  
33 sensitive information sought to be disclosed, in a written statement  
34 dated and expressly accepted by the consumer that is separate and  
35 distinct from any other document, and that contains a description of  
36 the information sought to be disclosed and the purpose for which the  
37 information will be disclosed. If the written statement is made  
38 online, it must be on a separate web page.

1       (3) This section does not apply to disclosure of sensitive  
2 information under the following circumstances:

3       (a) Disclosure to or at the direction or with the consent of the  
4 consumer upon his or her request. Proper identification may be  
5 required;

6       (b) Disclosure required by federal, state, or local law or  
7 regulation, rules, and other applicable legal requirements;

8       (c) Disclosure made in the course of a properly authorized civil,  
9 criminal, or regulatory examination or investigation or under a search  
10 warrant, court order, or subpoena, including an administrative subpoena  
11 or other legal process;

12       (d) Disclosure to a third party or an affiliate for the purpose of  
13 collecting a debt or a dishonored item. However, the recipient of the  
14 information is subject to section 9 of this act;

15       (e) Disclosure to protect the confidentiality or security of the  
16 information custodian's records;

17       (f) Disclosure to protect against, investigate, or prevent actual  
18 or potential fraud or unauthorized transactions, claims, or other  
19 liability or to verify information provided by a consumer in connection  
20 with a claim or application for services or benefits;

21       (g) Disclosure as part of a risk control program required by or  
22 subject to examination by regulators;

23       (h) Disclosure by or to a consumer reporting agency as specifically  
24 permitted under the federal Fair Credit Reporting Act (15 U.S.C. Sec.  
25 1681 et seq.). However, the information custodian shall inform the  
26 recipient that the information is subject to section 9 of this act;

27       (i) Disclosure of consumer information between affiliates of a  
28 depository institution as specifically permitted under the federal Fair  
29 Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.);

30       (j) Disclosure of sensitive information which is prohibited from  
31 disclosure by section 502(d) of Public Law 106-102 (the Gramm-Leach-  
32 Bliley Act of 1999);

33       (k) Disclosure for purposes of a proposed or actual securitization,  
34 secondary market sale (including sales service rights), or similar  
35 transactions related to a consumer-requested purpose;

36       (l) Disclosure to persons holding a legal or beneficial interest  
37 relating to the consumer;

38       (m) Disclosure in order to provide information to insurance rate,  
39 claim, or underwriting advisory organizations, guaranty funds or

1 agencies, applicable rating agencies of the information custodian,  
2 persons assessing the information custodian's compliance with industry  
3 standards, and the information custodian's attorneys, accountants, and  
4 auditors;

5 (n) Disclosure in connection with a proposed or actual sale,  
6 merger, transfer, or exchange of all or a portion of a business or  
7 operating unit or an insurance agent's book of business or interest in  
8 real property if the disclosure of information concerns solely  
9 consumers of the business or unit or consumers with the right to occupy  
10 the real property;

11 (o) Disclosure of health care information in compliance with state  
12 and federal law;

13 (p) Disclosure to a federal, state, or local agency as required by  
14 that agency to fulfill its legal obligations on behalf of a consumer;

15 (q) Disclosure between licensees or franchisees and their licensors  
16 or franchisors, when (i) such licensees or franchisees market, sell, or  
17 lease products, goods, or services in a retail setting at a common  
18 physical address with the licensor or franchisor; (ii) have common data  
19 processing functions with the licensor or franchisor; and (iii)  
20 advertise, market, or sell products, goods, or services marked or  
21 otherwise directly identified with the franchisor's or licensor's name  
22 or distinctive brand. However, the recipient of the information is  
23 subject to section 9 of this act;

24 (r) Disclosure to maintain or service a consumer's private label or  
25 affinity credit card account. However, the recipient of the  
26 information is subject to section 9 of this act;

27 (s) Disclosure by an entity or person to the public related to the  
28 gathering, publishing, disseminating, or circulating of news or matters  
29 of public interest or concern.

30 NEW SECTION. **Sec. 8.** An information custodian shall not disclose,  
31 other than for a functional business purpose or a consumer-requested  
32 purpose, sensitive information for use in marketing to the consumer.

33 NEW SECTION. **Sec. 9.** CONFIDENTIALITY AND SECURITY OF INFORMATION.  
34 (1) Third parties or affiliates that obtain personal information or  
35 sensitive information from information custodians, other than those who  
36 receive driver's license numbers in connection with the offering or  
37 maintenance of an insurance policy, must: (a) Not sell, share, or

1 otherwise transfer the information for any reason other than the  
2 allowed purposes for which the information was sold, shared, or  
3 transferred by the information custodian or under circumstances  
4 described in those subsections of sections 5(3) or 7(3) of this act to  
5 which this section is not expressly subject; (b) keep the information  
6 confidential; and (c) safeguard the information from loss, misuse,  
7 theft, unauthorized access, disclosure, defacement, or alteration.

8 (2) An information custodian, before sharing, selling, or otherwise  
9 transferring personal information or sensitive information, must obtain  
10 an agreement from the intended recipient providing for the following:

11 (a) To keep the information confidential;

12 (b) To use the information only for the allowed purposes for which  
13 it has been shared, sold, or provided, or under circumstances described  
14 in those subsections of sections 5(3) or 7(3) of this act to which this  
15 section is not expressly subject; and

16 (c) To safeguard the information from loss, misuse, theft,  
17 unauthorized access, disclosure, defacement, or alteration.

18 (3) Every information custodian must establish reasonable  
19 safeguards to ensure the confidentiality and safety of personal  
20 information and sensitive information and to protect them from loss,  
21 misuse, theft, unauthorized access, disclosure, defacement, or  
22 alteration.

23 NEW SECTION. **Sec. 10.** ACTIONS OR TRANSACTIONS BY COMPETITIVE  
24 TELECOMMUNICATIONS COMPANIES. The actions or transactions of  
25 information custodians or marketers who are classified as competitive  
26 telecommunications companies under RCW 80.36.320 or who are  
27 telecommunications companies providing competitive telecommunications  
28 services are subject to this chapter and the Consumer Protection Act.

29 NEW SECTION. **Sec. 11.** VIOLATION AN UNFAIR OR DECEPTIVE ACT. (1)  
30 Unfair and deceptive invasion of privacy rights is not reasonable in  
31 relation to the development and preservation of business. The  
32 legislature finds that the practices covered by this chapter are  
33 matters vitally affecting the public interest for the purpose of  
34 applying the Consumer Protection Act, chapter 19.86 RCW. A violation  
35 of this chapter is an unfair or deceptive act in trade or commerce for  
36 the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

1 (2) In any action for a violation of this chapter, with the  
2 exception of section 7 of this act, an information custodian or  
3 marketer may raise as a defense that the violation was not intentional  
4 and was the result of a bona fide error. This defense must be proved  
5 by a preponderance of the evidence. Examples of a bona fide error  
6 include clerical, calculation, computer malfunction and programming,  
7 and printing errors.

8 (3) Damages to a person who has been the victim of a violation of  
9 this chapter are five hundred dollars, or actual damages, whichever is  
10 greater. A court may increase the award of damages in an amount not  
11 more than three times the actual damages sustained, or one thousand  
12 five hundred dollars, whichever is greater, upon a showing by a  
13 preponderance of the evidence that a violation of the chapter was  
14 willful.

15 (4) In the case of a class action for a violation of this chapter,  
16 the total recovery of statutory damages in any class action arising out  
17 of the same failure to comply may not be more than one percent of the  
18 net worth of the defendant. There is no limit on the recovery of  
19 actual damages.

20 (5) Nothing in this section limits the authority of the attorney  
21 general to enforce this chapter, or seek full recovery of both  
22 statutory and actual damages.

23 (6) The remedies provided for a violation of this chapter are  
24 exclusive of the remedies provided for a violation of chapter 9.35 RCW.  
25 No violation of this chapter is an unlawful activity under RCW  
26 9.35.020(2) or under RCW 9.35.010.

27 NEW SECTION. **Sec. 12.** FILING ACTION--CONSEQUENCES. Filing an  
28 action for a violation of this chapter constitutes a certificate that  
29 to the best of the plaintiff's knowledge, information, and belief,  
30 formed after reasonable inquiry, it is well grounded in fact and is  
31 warranted by existing law or a good faith extension or reversal of  
32 existing law, and that it is not brought for any improper purpose, such  
33 as to harass or create a nuisance. If an action is filed in violation  
34 of this section, the court, upon motion or upon its own initiative, may  
35 impose upon the plaintiff an appropriate sanction, that may include an  
36 order to pay to the other party or parties the amount of the reasonable  
37 expenses incurred because of the filing of the action, including a  
38 reasonable attorney's fee.

NEW SECTION. **Sec. 13.** FEDERAL INVALIDITY--ANTITRUST LAWS. If the responsible federal chartering authority, under applicable federal law, or if a court of competent jurisdiction declares that any provision of this chapter is invalid with respect to any financial institution, the provision is also invalid, to the same extent, with respect to financial institutions chartered under the laws of the state of Washington and to host branches of out-of-state financial institutions. The director of the department of financial institutions may, from time to time, publish provisions of state laws that have been found invalidated under federal law and procedures. This section does not impair in any manner the authority of the state attorney general to enforce antitrust laws applicable to financial institutions or their affiliates.

NEW SECTION. **Sec. 14.** REMEDIES NONEXCLUSIVE. Nothing in this chapter in any way limits, replaces, or diminishes the protections and remedies afforded by the Domestic Violence Prevention Act, chapter 26.50 RCW, or any other act intended to protect the privacy and safety of residents of this state.

NEW SECTION. **Sec. 15.** A new section is added to chapter 9.35 RCW to read as follows:

DEFINITIONS. As used in this chapter, unless the context clearly requires otherwise:

(1) "Financial information" means, to the extent it is nonpublic, any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:

(a) Account numbers and balances;

(b) Transactional information concerning an account; and

(c) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicard numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(2) "Financial information repository" means a person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.



(3) "Means of identification" means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including a current or former name of the person, telephone number, and electronic address or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver's license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(4) "Person" means an individual, partnership, corporation, or association.

(5) "Victim" means a person whose means of identification has been used or transferred with the intent to commit, or to aid or abet, an unlawful activity harming or intending to harm the person whose identity is used, or to commit a felony.

NEW SECTION. **Sec. 16.** A new section is added to chapter 9.35 RCW to read as follows:

**INFORMATION AVAILABLE TO VICTIM.** (1) A person, financial information repository, corporation, trust, partnership, or unincorporated association possessing information relating to an actual or potential violation of this chapter, and who may have entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person who has used the victim's means of identification, must, upon request of the victim, provide copies of all information relevant to the potential or actual violation of this chapter.

(2) Before providing the information required under subsection (1) of this section, the provider may require the victim to provide positive identification of the victim and a copy of a police report evidencing the victim's claim. The provider may require reasonable compensation for the reasonable cost of providing the information requested.

(3) No person, financial information repository, corporation, trust, partnership, or unincorporated association may be held liable for an action voluntarily taken in good faith to provide information regarding potential or actual violations of this chapter to other

1 financial information repositories, merchants, law enforcement  
2 authorities, the victim, or any person alleging to be a victim who  
3 provides positive identification and a copy of a police report  
4 evidencing the alleged victim's claim for the purpose of identification  
5 and prosecution of violators of this chapter, or to assist a victim in  
6 recovery of fines, restitution, rehabilitation of the victim's credit,  
7 or such other relief as may be appropriate.

8       **Sec. 17.** RCW 19.16.250 and 1983 c 107 s 1 are each amended to read  
9 as follows:

10       No licensee or employee of a licensee shall:

11       (1) Directly or indirectly aid or abet any unlicensed person to  
12 engage in business as a collection agency in this state or receive  
13 compensation from such unlicensed person: PROVIDED, That nothing in  
14 this chapter shall prevent a licensee from accepting, as forwarder,  
15 claims for collection from a collection agency or attorney whose place  
16 of business is outside the state.

17       (2) Collect or attempt to collect a claim by the use of any means  
18 contrary to the postal laws and regulations of the United States postal  
19 department.

20       (3) Publish or post or cause to be published or posted, any list of  
21 debtors commonly known as "bad debt lists" or threaten to do so. For  
22 purposes of this chapter, a "bad debt list" means any list of natural  
23 persons alleged to fail to honor their lawful debts. However, nothing  
24 herein shall be construed to prohibit a licensee from communicating to  
25 its customers or clients by means of a coded list, the existence of a  
26 check dishonored because of insufficient funds, not sufficient funds or  
27 closed account by the financial institution servicing the debtor's  
28 checking account: PROVIDED, That the debtor's identity is not readily  
29 apparent: PROVIDED FURTHER, That the licensee complies with the  
30 requirements of subsection (9)(e) of this section.

31       (4) Have in his possession or make use of any badge, use a uniform  
32 of any law enforcement agency or any simulation thereof, or make any  
33 statements which might be construed as indicating an official  
34 connection with any federal, state, county, or city law enforcement  
35 agency, or any other governmental agency, while engaged in collection  
36 agency business.

37       (5) Perform any act or acts, either directly or indirectly,  
38 constituting the practice of law.

1 (6) Advertise for sale or threaten to advertise for sale any claim  
2 as a means of endeavoring to enforce payment thereof or agreeing to do  
3 so for the purpose of soliciting claims, except where the licensee has  
4 acquired claims as an assignee for the benefit of creditors or where  
5 the licensee is acting under court order.

6 (7) Use any name while engaged in the making of a demand for any  
7 claim other than the name set forth on his or its current license  
8 issued hereunder.

9 (8) Give or send to any debtor or cause to be given or sent to any  
10 debtor, any notice, letter, message, or form which represents or  
11 implies that a claim exists unless it shall indicate in clear and  
12 legible type:

13 (a) The name of the licensee and the city, street, and number at  
14 which he is licensed to do business;

15 (b) The name of the original creditor to whom the debtor owed the  
16 claim if such name is known to the licensee or employee: PROVIDED,  
17 That upon written request of the debtor, the licensee shall make a  
18 reasonable effort to obtain the name of such person and provide this  
19 name to the debtor;

20 (c) If the notice, letter, message, or form is the first notice to  
21 the debtor or if the licensee is attempting to collect a different  
22 amount than indicated in his or its first notice to the debtor, an  
23 itemization of the claim asserted must be made including:

24 (i) Amount owing on the original obligation at the time it was  
25 received by the licensee for collection or by assignment;

26 (ii) Interest or service charge, collection costs, or late payment  
27 charges, if any, added to the original obligation by the original  
28 creditor, customer or assignor before it was received by the licensee  
29 for collection, if such information is known by the licensee or  
30 employee: PROVIDED, That upon written request of the debtor, the  
31 licensee shall make a reasonable effort to obtain information on such  
32 items and provide this information to the debtor;

33 (iii) Interest or service charge, if any, added by the licensee or  
34 customer or assignor after the obligation was received by the licensee  
35 for collection;

36 (iv) Collection costs, if any, that the licensee is attempting to  
37 collect;

1 (v) Attorneys' fees, if any, that the licensee is attempting to  
2 collect on his or its behalf or on the behalf of a customer or  
3 assignor;

4 (vi) Any other charge or fee that the licensee is attempting to  
5 collect on his or its own behalf or on the behalf of a customer or  
6 assignor.

7 (9) Communicate or threaten to communicate, the existence of a  
8 claim to a person other than one who might be reasonably expected to be  
9 liable on the claim in any manner other than through proper legal  
10 action, process, or proceedings except under the following conditions:

11 (a) A licensee or employee of a licensee may inform a credit  
12 reporting bureau of the existence of a claim: PROVIDED, That if the  
13 licensee or employee of a licensee reports a claim to a credit  
14 reporting bureau, the licensee shall upon receipt of written notice  
15 from the debtor that any part of the claim is disputed, forward a copy  
16 of such written notice to the credit reporting bureau;

17 (b) A licensee or employee in collecting or attempting to collect  
18 a claim may communicate the existence of a claim to a debtor's employer  
19 if the claim has been reduced to a judgment;

20 (c) A licensee or employee in collecting or attempting to collect  
21 a claim that has not been reduced to judgment, may communicate the  
22 existence of a claim to a debtor's employer if:

23 (i) The licensee or employee has notified or attempted to notify  
24 the debtor in writing at his last known address or place of employment  
25 concerning the claim and the debtor after a reasonable time has failed  
26 to pay the claim or has failed to agree to make payments on the claim  
27 in a manner acceptable to the licensee, and

28 (ii) The debtor has not in writing to the licensee disputed any  
29 part of the claim: PROVIDED, That the licensee or employee may only  
30 communicate the existence of a claim which has not been reduced to  
31 judgment to the debtor's employer once unless the debtor's employer has  
32 agreed to additional communications.

33 (d) A licensee may for the purpose of locating the debtor or  
34 locating assets of the debtor communicate the existence of a claim to  
35 any person who might reasonably be expected to have knowledge of the  
36 whereabouts of a debtor or the location of assets of the debtor if the  
37 claim is reduced to judgment, or if not reduced to judgment, when:

38 (i) The licensee or employee has notified or attempted to notify  
39 the debtor in writing at his last known address or last known place of

1 employment concerning the claim and the debtor after a reasonable time  
2 has failed to pay the claim or has failed to agree to make payments on  
3 the claim in a manner acceptable to the licensee, and

4 (ii) The debtor has not in writing disputed any part of the claim.

5 (e) A licensee may communicate the existence of a claim to its  
6 customers or clients if the claim is reduced to judgment, or if not  
7 reduced to judgment, when:

8 (i) The licensee has notified or attempted to notify the debtor in  
9 writing at his last known address or last known place of employment  
10 concerning the claim and the debtor after a reasonable time has failed  
11 to pay the claim or has failed to agree to make payments on the claim  
12 in a manner acceptable to the licensee, and

13 (ii) The debtor has not in writing disputed any part of the claim.

14 (10) Threaten the debtor with impairment of his credit rating if a  
15 claim is not paid.

16 (11) Communicate with the debtor after notification in writing from  
17 an attorney representing such debtor that all further communications  
18 relative to a claim should be addressed to the attorney: PROVIDED,  
19 That if a licensee requests in writing information from an attorney  
20 regarding such claim and the attorney does not respond within a  
21 reasonable time, the licensee may communicate directly with the debtor  
22 until he or it again receives notification in writing that an attorney  
23 is representing the debtor.

24 (12) Communicate with a debtor or anyone else in such a manner as  
25 to harass, intimidate, threaten, or embarrass a debtor, including but  
26 not limited to communication at an unreasonable hour, with unreasonable  
27 frequency, by threats of force or violence, by threats of criminal  
28 prosecution, and by use of offensive language. A communication shall  
29 be presumed to have been made for the purposes of harassment if:

30 (a) It is made with a debtor or spouse in any form, manner, or  
31 place, more than three times in a single week;

32 (b) It is made with a debtor at his or her place of employment more  
33 than one time in a single week;

34 (c) It is made with the debtor or spouse at his or her place of  
35 residence between the hours of 9:00 p.m. and 7:30 a.m.

36 (13) Communicate with the debtor through use of forms or  
37 instruments that simulate the form or appearance of judicial process,  
38 the form or appearance of government documents, or the simulation of a  
39 form or appearance of a telegraphic or emergency message.

1       (14) Communicate with the debtor and represent or imply that the  
2 existing obligation of the debtor may be or has been increased by the  
3 addition of attorney fees, investigation fees, service fees, or any  
4 other fees or charges when in fact such fees or charges may not legally  
5 be added to the existing obligation of such debtor.

6       (15) Threaten to take any action against the debtor which the  
7 licensee cannot legally take at the time the threat is made.

8       (16) Send any telegram or make any telephone calls to a debtor or  
9 concerning a debt or for the purpose of demanding payment of a claim or  
10 seeking information about a debtor, for which the charges are payable  
11 by the addressee or by the person to whom the call is made.

12       (17) In any manner convey the impression that the licensee is  
13 vouched for, bonded to or by, or is an instrumentality of the state of  
14 Washington or any agency or department thereof.

15       (18) Collect or attempt to collect in addition to the principal  
16 amount of a claim any sum other than allowable interest, collection  
17 costs or handling fees expressly authorized by statute, and, in the  
18 case of suit, attorney's fees and taxable court costs.

19       (19) Procure from a debtor or collect or attempt to collect on any  
20 written note, contract, stipulation, promise or acknowledgment under  
21 which a debtor may be required to pay any sum other than principal,  
22 allowable interest, and, in the case of suit, attorney's fees and  
23 taxable court costs.

24       (20) Upon notification by a debtor, that a police report has been  
25 filed indicating that the debtor's checkbook or other series of  
26 preprinted written instruments has been stolen, and upon receipt of a  
27 copy of the report, fail to accept one single writing from the debtor  
28 that identifies the numbers of the checks, the bank, and account  
29 number, that disputes creditors' claims for the identified checks or  
30 written instruments and that includes a copy of the debtor's driver's  
31 license or other document containing the debtor's signature that was  
32 executed before the date of claim identified in the police report. If  
33 more than one collection agency is attempting collection on individual  
34 checks or written instruments that are part of the series, each  
35 collection agency may request a single writing from the debtor that  
36 disputes creditors' claims for the entire checkbook or series. Once a  
37 single writing has been received, the collection agency must not,  
38 except in the context of a judicial or administrative proceeding,  
39 contact the debtor orally within the one hundred eighty-day period

after receipt of the writing to require additional proof, explanation, or evidence from the debtor disputing creditors' claims regarding the enumerated checks or other written instruments in the same series or lot and must consider the single writing as a dispute to all creditors' claims arising from use of the enumerated checks or other series of instruments.

**Sec. 18.** RCW 9.35.010 and 1999 c 368 s 2 are each amended to read as follows:

(1) No person may obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, financial information from a financial information repository:

(a) By knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial information repository with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the financial information;

(b) By knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial information repository with the intent to deceive the customer into releasing financial information or authorizing the release of such information;

(c) By knowingly providing any document to an officer, employee, or agent of a financial information repository, knowing that the document is forged, counterfeit, lost, or stolen; was fraudulently obtained; or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent to release the financial information.

(2) No person may request another person to obtain financial information from a financial information repository and knows or should have known that the person will obtain or attempt to obtain the information from the financial institution repository in any manner described in subsection (1) of this section.

~~(3) ((As used in this section, unless the context clearly requires otherwise:~~

~~(a) "Financial information" means, to the extent it is nonpublic, any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:~~

~~(i) Account numbers and balances;~~

~~(ii) Transactional information concerning any account; and~~  
~~(iii) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identification numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.~~

~~(b) "Financial information repository" means any person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.~~

~~(c) "Person" means an individual, partnership, corporation, or association.~~

~~(4))~~ No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, or any action of an agent of the financial information repository when working in conjunction with a law enforcement agency.

~~((5))~~ (4) This section does not apply to:

(a) Efforts by the financial information repository to test security procedures or systems of the financial institution repository for maintaining the confidentiality of customer information;

(b) Investigation of alleged employee misconduct or negligence; or

(c) Efforts to recover financial or personal information of the financial institution obtained or received by another person in any manner described in subsection (1) or (2) of this section.

~~((6))~~ (5) Violation of this section is a class C felony.

~~((7))~~ (6) A person ~~((that [who]))~~ who violates this section is liable for five hundred dollars or actual damages, whichever is greater, and reasonable attorneys' fees. If the person violating this section is a business that repeatedly violates this section, that person also violates the Consumer Protection Act, chapter 19.86 RCW.

**Sec. 19.** RCW 9.35.020 and 1999 c 368 s 3 are each amended to read as follows:

(1) No person may knowingly use or knowingly transfer a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity harming or intending to harm the person whose identity is used, or for committing any felony.

(2) ~~((For purposes of this section, "means of identification" means any information or item that is not describing finances or credit but~~



~~is personal to or identifiable with any individual or other person, including any current or former name of the person, telephone number, and electronic address or identifier of the individual or any member of his or her family, including the ancestor of such person; any information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; any social security, driver's license, or tax identification number of the individual or any member of his or her family; and other information which could be used to identify the person, including unique biometric data.~~

~~(3))~~ Violation of this section is a class C felony.

~~((4))~~ (3) A person ~~((that [who]))~~ who violates this section is liable for five hundred dollars or actual damages, including costs to repair the person's credit record, whichever is greater, and reasonable attorneys' fees. If the person violating this section is a business that repeatedly violates this section, that person also violates the Consumer Protection Act, chapter 19.86 RCW.

NEW SECTION. Sec. 20. (1) The attorney general, in consultation with representatives from individual consumers, public interest organizations, financial institutions, retailers, online services, the legislature, and other interested parties shall:

(a) Examine information-sharing practices among information custodians and their affiliates;

(b) Develop a model privacy policy disclosure to conform with the disclosure requirements of sections 4, 5, 6, and 7 of this act;

(c) Present recommendations on affiliate sharing and model privacy policies to the legislature within ninety days of the effective date of this initiative.

(2) The senate committee on commerce, trade, housing and financial institutions and the house of representatives committee on financial institutions and insurance shall conduct a joint review of the practices of entities that collect and sell personal and sensitive information obtained from the records maintained by government agencies and nonprofit entities.

NEW SECTION. Sec. 21. Sections 1 through 14 of this act constitute a new chapter in Title 19 RCW.

1        NEW SECTION.   **Sec. 22.**   Section captions used in sections 1 through  
2   16 of this act are not part of the law.

3        NEW SECTION.   **Sec. 23.**   If any provision of this act or its  
4   application to any person or circumstance is held invalid, the  
5   remainder of the act or the application of the provision to other  
6   persons or circumstances is not affected.

7        NEW SECTION.   **Sec. 24.**   Sections 1 through 14 of this act take  
8   effect ninety days after the effective date of this initiative.

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